to possess". According to this interpretation a person who buys a car on the hire-purchase system has, as long as the terms of the agreement are complied with, the right to possess the car; so also has a person who hires a car for a period of time for the purpose of using it as a taxi or a pawnee or a bailee for a definite period of time."

I would venture to say that I cannot agree more with this interpretation. Wan Adam lost the right to "possess" and was therefore no longer "entitled to possess" the car when in breach of paragraph 4 of the hire-purchase agreement Ex. P. 3 he knowingly used it to convey opium. Para. 4 of the agreement reads "The Hirer, during the continuance of the hiring will pay all fines etc. . . . . and will not during the hiring use or permit to be used the vehicle in contravention of any statute, ordinance, Enactment or regulation for the time being in force, or in any manner by reason of which the vehicle may become liable to seizure, confiscation or forfeiture or otherwise in any way contrary to law . . . ."

Para. 7 of the Agreement enables the Respondent firm "to terminate hiring and resume possession of the vehicle." In my opinion the male Accused Wan Adam lost his "right to possess" the car the very instant he did an act in breach of the agreement, quite regardless of the fact that the car remained in his "constructive" possession. As the respondent company could never have had any knowledge, or consented to or connived at the commission of the offence, by virtue of its being a corporate body, I held that the application must fail and car K. 5739 should be returned to the respondent company."

It would seem therefore that the point or issue I have to decide is the weight to be placed on § 7 of the Hire Purchase Agreement and its bearing on the meaning of the word "owner" in section 30(7) of the Dangerous Drugs Ordinance.

I was referred to the case of *Jelks v. Hayward*[2] which is mentioned at page 72 in *Earengey* on Hire Purchase. In that case furniture was let under a hire purchase agreement which contained a clause allowing the owners, without previous notice, to determine the hiring and retake possession if the furniture should at any time be seized or taken in execution. It was taken in execution by the high bailiff of a County Court under a judgment against the hirer: the owners did not discover this in time to proceed under section 156 of the County Courts Act, 1888. The furniture was sold under the execution, and on the day after the sale the owners gave notice of their claim to the proceeds. In the interpleader proceedings the execution creditors admitted the owners' title to the proceeds, and the owners then claimed, and recovered, damages for conversion against the high bailiff. It was held that the hirer's interest in the goods ceased on the seizure, and the owners thereupon became entitled to the possession under the agreement. The sale and delivery by the high bailiff, which took place after this, was therefore an act of conversion, and it was none the less so because the owners did not know of the execution or given notice of their rights. Had the agreement merely given the owners the right to terminate on notice, they would not have become entitled to the possession until the notice was given; and as they did not know of the execution until after the sale, this notice would not have been in time to make the sale and the delivery thereunder an act of conversion. The Court disagreed with the suggestion that the option of purchase made any difference to the position.

In *Loke Tham Chuan v. Public Prosecutor*[1] Buhagiar J. held that the meaning of the word "possession" in section 30(7) of the Dangerous Drugs Ordinance must be considered from the aspect of the Civil Law. As the learned Judge then pointed out "possession" is a word of ambiguous meaning and its legal senses do not coincide with the popular sense and that "possession", "right of possession", "legal possession", "possession in law", right to possession", "constructive possession", "physical possession" are phrases occurring in reports and in books and some of them are often used interchangeably.

The phrase used in section 30(7) is that "owner of a conveyance means the person entitled to the possession of the same immediately before seizure."

If therefore in this appeal "possession" is considered from the aspect of Civil Law it seems clear on the authority of *Jelks v. Hayward*[2] and in conformity with the opinion expressed by Buhagiar J. that in view of the breach by the Hirer of § 7 of the Hire Purchase agreement the person entitled to possession of the motor car immediately before seizure was Patani Motors and that that firm was rightly held to be the owner by the learned President.

In spite of sub-section (2) of section 30 of the Dangerous Drugs Ordinance it may well be that this interpretation of sub-section (7) was not the intention of the Legislature, but if it is the intention that a penal section such as this should deprive citizens of their civil contractual rights that intention should be indicated in clear and unambiguous terms.

I am therefore of opinion that the learned President was right and I accordingly dismiss the appeal.

Appeal dismissed

PUBLIC PROSECUTOR v. V. NEELAKANDAN & ANOR.

[A. Cr. J. (Hill J.) March 9, 1957]

[Alor Star — Kedah Criminal Appeal No. 7 of 1957]

Prevention of Corruption Ordinance, 1950, s. 3(c) — "Intent to deceive" — "Intent to defraud" — Proof.

In an offence punishable under section 3(c) of the Prevention of Corruption Ordinance, 1950, it is only required to show that there was an "intent to deceive".

It is not necessary to show an "intent to defraud", but if such intent to defraud is proved, it would doubtless influence the Court when it came to sentence.

MAGISTRATE'S CRIMINAL APPEAL.

B. Sheldon (Federal Counsel) for the appellant.
R. R. Chelliah for 1st respondent.
Natha Singh for 2nd respondent.

Cases referred to:—

(1) *Re London & Globe Finance Corporation, Ltd.* (1903) 1 Ch. 728.
(2) *Re Henry Leonard Asquith Wines* (1955) 37 Cr. App. R. 197.

Hill J. : — The two respondents were charged respectively before the President, Sessions Court, Alor Star, with the following offences :—

Respondent No. (1):

1. That you on or about the 27th day of September, 1954, at Alor Star, Kedah, being an agent, namely a Technical Assistant employed by the Public Works Department, Kedah, knowingly used with intent to deceive your principal an account relating to a stay made by you at the Waldorf Hotel, Penang, in which your principal was interested, which was false in a material particular, namely it stated that you had occupied room No. 25 when you had in fact occupied room No. 23 together with one Ku Mohamed and which to your knowledge intended to deceive your principal and you thereby committed an offence punishable under section 3(c) of the Prevention of Corruption Ordinance, 1950.

2. That you at the same time and place being an agent as aforesaid knowingly used with intent to deceive your principal an account relating to a stay made by you at the Waldorf Hotel, Penang, which your principal was interested, which was false in a material particular, namely it stated that you had been charged at the rate of $6.00 per diem for occupying a room in the said Hotel and which was to your knowledge intended to deceive your principal and you thereby committed an offence punishable under section 3(c) of the Prevention of Corruption Ordinance, 1950.

Respondent No. (2):

That you on or about the 27th day of September, 1954, at Alor Star, Kedah, being an agent namely a Technical Assistant employed in the Public Works Department, Kedah, knowingly used with intent to deceive your principal an account relating to a stay made by you at the Waldorf Hotel, Penang, in which your principal was interested, which was false in a material particular, namely it stated that you had been charged at the rate of $6.00 per diem for occupying a room in the said Hotel and which was to your knowledge intended to deceive your principal and you thereby committed an offence punishable under section 3(c) of the Prevention of Corruption Ordinance 1950.

At the close of the case for the prosecution the learned President acquitted and discharged both the respondents without calling on them to make their defence.

Against this decision the Public Prosecutor appealed.

This was a very unsatisfactory prosecution, an unnecessary number of witnesses was called and most of them were unreliable. It is not surprising therefore that the learned President took the course he did, though had I been in his place I feel I would have called for a defence. Nevertheless, I cannot say that on the evidence itself that the President was obviously at fault in the course he adopted and I do not propose to interfere.

That being so I would ordinarily have dismissed this appeal without having recourse to a written judgment had I not felt it necessary to state my views on certain legal aspects arising from the charges.

These arise from the first ground in the Petition of Appeal at § 3 (a) namely "that the learned President misdirected himself in law in holding that an intent to defraud was a material element in the charge."

It is clear from his written judgment that this was the view held by the learned President.

The material element in the charges against the respondents was their using an account relating to their stay at the Waldorf Hotel, Penang, with intent to deceive their principal.

Here the intention to deceive can only be held to mean "to induce a frame of mind" and not to be extended to include an attempt to defraud.

Such an offence may well prove to be of a technical or even trivial nature. Where the evidence establishes that a fraudulent gain or breach of trust has resulted, that is an aspect to be taken into account when sentence is being considered, but the absence of such an ingredient should not affect the real issue or gravamen of the charge which is restricted to an intent to deceive for whatever purpose.

In this connection see the *dictum* of Buckley J. in *Re London & Globe Finance Corporation, Ltd.*[1] which was followed and indeed described as the *locus classicus* on the subject by the Court of Criminal Appeal in *Re Henry Leonard Asquith Wines*[2].

In my view the incident giving rise to these charges against the respondents was clearly one that should have been dealt with departmentally, if any further action, resulting from an audit query, against the respondents was considered necessary.

As indicated already I do not propose to interfere with the learned President's order and the appeal, which was most properly brought by learned Deputy Public Prosecutor in view of the important legal aspect, is dismissed.

Appeal dismissed.

PUBLIC PROSECUTOR v. YOONG SHING PAWNSHOP & ORS.

[A. Cr. J. (Buhagiar J.) April 25, 1957]

[K. L. — Criminal Application No. 2 of 1957]

Pawnbrokers Enactment (F.M.S. Cap. 85), s. 20 — Inquiry as to ownership of articles pawned produced as exhibits in Court — Discretion — Order.

In any case where articles which have been in pawn are produced as exhibits in Court, before making any Order in respect of such exhibits, it is incumbent on the